



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/828,699

04/21/2004

Karen M. Cheves

1001.1705101

5388

28075 7590 08/04/2009
CROMPTON, SEAGER & TUFTE, LLC
1221 NICOLLET AVENUE
SUITE 800
MINNEAPOLIS, MN 55403-2420

EXAMINER

GILBERT, ANDREW M

ART UNIT

PAPER NUMBER

3767

MAIL DATE

DELIVERY MODE

08/04/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/828,699	Applicant(s) CHEVES ET AL.	
	Examiner ANDREW M. GILBERT	Art Unit 3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/1/2009 has been entered.

Acknowledgements

1. This office action is in response to the reply filed 7/1/2009 and 3/2/2009.
2. Claim 15 was amended.
3. Thus, claim 15 is pending for examination.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 15 is rejected under 35 U.S.C. 102(e) as being anticipated by Wu et al (2004/0243156).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

5. Wu et al discloses a cutting balloon catheter (Fig 2), comprising: an elongate catheter shaft (12); a balloon (114) coupled to the shaft, the balloon having a first inflated configuration and a second non-inflated configuration (Fig 2-4), wherein the balloon has a plurality of wings formed therein when in the second configuration (Fig 2-4); a metallic cutting blade (16) for severing or breaking up a lesion affixed to the balloon (Fig 2-4; Summary), the cutting blade including means for cutting having two intersecting planes which form a cutting edge, including means for gripping thereon and having a longitudinal axis (16; Fig 2-4), and having a cross-sectional shape that is substantially triangular in a plane traverse to the longitudinal axis (16; Fig 2-4); wherein the means for cutting and means for gripping are defined by a series of undulations (16; Fig 2; wherein the cutting members shown have matching waves as waves 44 on wings 42) on the cutting blade; and wherein the undulations curve from side-to-side relative to the longitudinal axis (16; Fig 2; wherein the cutting members shown have matching waves as waves 44 on wings 42).

6. Claim 15 is rejected under 35 U.S.C. 102(e) as being anticipated by Shaw et al (7279002). Shaw et al discloses a cutting balloon catheter (Summary; Fig 12), comprising: an elongate catheter shaft (Fig 12); a balloon (152) coupled to the shaft, the balloon having a first inflated configuration and a second non-inflated configuration (Fig 25; col 7-8), wherein the balloon has a plurality of wings formed therein when in the second configuration (Fig 25); a metallic cutting blade (104; Fig 3) for severing or breaking up a lesion affixed to the balloon (col 3, lns 57-col 4; wherein the Examiner notes that the "affixed to the balloon" means that the metallic cutting blade is attached physically to the balloon in some manner -- the cutting blade 104 on stent 100 is attached to the balloon during use), the cutting blade including means for cutting having two intersecting planes which form a cutting edge, including means for gripping thereon and having a longitudinal axis (104; Fig 3, 5), and having a cross-sectional shape that is substantially triangular in a plane traverse to the longitudinal axis (104; Fig 3, 5); wherein the means for cutting and means for gripping are defined by a series of undulations (104; Fig 3) on the cutting blade; and wherein the undulations curve from side-to-side relative to the longitudinal axis (104; Fig 3).

7. Last, the Examiner notes that it would be obvious to use the teaching of undulating cutting members on the stent to modify the cutting members on the balloon under KSR guidelines the modification is a simple substitution (MPEP 2141(III)(B)) of one straight cutting member for an undulating cutting member to obtain predictable results as taught by Shaw, and, the modification would be obvious to try (MPEP 2141(III)(F)) to choose the undulating cutting member and try it out as a replacement for

the straight cutting member as it is a choice of a finite number of identified cutting members that achieve a predictable solution with a reasonable expectation of success.

Response to Arguments

1. Applicant's arguments with respect to claim 15 have been considered but are moot in view of the new ground(s) of rejection.

8. The Applicant argues that:

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW M. GILBERT whose telephone number is (571)272-7216. The examiner can normally be reached on 8:30 am to 5:00 pm Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571)272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew M Gilbert/
Examiner, Art Unit 3767
/Kevin C. Sirmons/
Supervisory Patent Examiner, Art Unit 3767